IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE S.SIRI JAGAN

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

WP(C).No. 28601 of 2007(E)

CP.27/1995 of LABOUR COURT, ERNAKULAM

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PETITIONERS:

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1. SRI. ARAVIND VITHAL SARAF,
   S/O. V.G. SARAF, SARAF HOUSE, KOCHI-682 003.

2. ULHLAS VITHAL SARAF,
   S/O. V.G. SARAF, SARAF HOUSE, KOCHI-682 003.

3. DR. ANIL KUMAR VITHAL SARAF,
   S/O. V.G. SARAF, SARAF HOUSE, KOCHI-682 003.

4. MRS. NILINI BAI SARAF,
   W/O. V.G. SARAF, SARAF HOUSE, KOCHI-682 003.

BY ADV. SRI.A.M.SHAFFIQUE
SRI.E.K.NANDAKUMAR
SRI.A.K.JAYASANKAR NAMBIAR
SRI.K.JOHN MATHAI
SRI.P.BENNY THOMAS
SRI.ANIL D. NAIR

RESPONDENTS:

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1. N.D. MOHAN,
   M/S. SARAF ELECTRONICS & ELECTRICALS COMPANY,
   KARAYOGAM BUILDING, DURBAR HALL ROAD,KOCHI-682 016

2. N.T. KALADHARAN,
   M/S. SARAF ELECTRONICS & ELECTRICALS COMPANY,
   DURBAR HALL ROAD,KOCHI-682 016.

3. V.A. VENUGOPALAN,
   M/S. SARAF ELECTRONICS & ELECTRICALS COMPANY,
   DURBAR HALL ROAD,KOCHI-682 016.

4. T.L. CHARLES,
   M/S. SARAF ELECTRONICS & ELECTRICALS COMPANY,
   DURBAR HALL ROAD,KOCHI-682 016.

5. M.A. SIVARAMAN,
   M/S. SARAF ELECTRONICS & ELECTRICALS COMPANY,
   DURBAR HALL ROAD,KOCHI-682 016.

6. P.A.NORBIN,
   M/S. SARAF ELECTRONICS & ELECTRICALS COMPANY,
   DURBAR HALL ROAD,KOCHI-682 016.

7. AVINASH VITHAL SARAF,
"VINAYAKA", PALLIYIL LANE, OFF.DIWANS ROAD,
KOCHI-682 016.

8. LABOUR COURT, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. A.J. VARGHESE.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

S. SIRI JAGAN, J.

W.P.(C)No.28601 OF 2007

Dated this the 26th day of September, 2007

JUDGMENT

The petitioners are the opposite parties in claim petition Nos.27/95 and 64/01 filed by respondents 1 to 6 before the 8th respondent. The claim was that the petitioners were not paid arrears of wages and bonus during the period from 1.4.1992 to 30.3.1995. They also contended that after 30.3.1995, the establishment was closed and therefore they are entitled to closure compensation. The petitioners took a stand before the Labour Court that the workmen were put up by the 7th respondent because of enmity between the petitioners and the 7th respondent. According to the petitioners, there was a settlement between the partners and the particular business of the firm in which the respondents 1 to 6 were working was taken over by the 7th respondent and he is the person, who is liable to pay the amounts, if any, due to the workers. The Labour Court found from the evidence that the workmen continued to work in the same establishment under the same terms and conditions of

service and therefore, they are not concerned with any internal arrangement between the petitioners and the 7th respondent. The Labour Court also found that there was failure to pay bonus and wages during the above said period. It was further found that since the firm was later on continued by the members of the same family and they are still working as such they are not entitled to any closure compensation. In that view, by the impugned order the workers were directed to be paid minimum bonus and arrears of wages as stated in Ext.P10 order of the Labour Court. The petitioners are challenging Ext.P10 order.

2. The contention of the petitioners is that there is a serious dispute regarding employer and employee relationship between the petitioners and respondents 1 to 6 in so far the business of the firm was taken over by the 7th respondent, who was also a partner of the firm and that workers were employed by the 7th respondent. The learned counsel for the petitioners would submit that this being a bonafide dispute regarding the employer-employee relationship, no claim petition could have been entertained under Section 33C(2) of the Industrial Disputes Act. The petitioners would also contend that the

claim petitions are collusive action between the workers and the 7th respondent out of enmity between the petitioners and the 7th respondent.

4. Admittedly, the petitioners and the 7th respondent are members of the same family. They started the business together as partners of the firm. As far as the workers are concerned, they have not been made aware of any partition of any business. They were continuing as employees in the same establishment drawing salary under the same terms and conditions. That being so, if there is an internal arrangement between the partners, until the workers are made aware of the same, the petitioners cannot contend that the employer changed and therefore, they are not liable. As far as the workers are concerned, the petitioners and the 7th respondent were together running the business and they were being paid by one of the partners which does not give the petitioners a right to contend that since the business was taken over by the 7th respondent, they are no longer the employers of the workers. In any event, this is purely a question of fact which has been found against the petitioners by the Labour Court. Limits of jurisdiction under Article 226 of the Constitution of

India in respect of challenge against orders of the Labour Court and Industrial Tribunals on questions of fact are well settled and questions of fact cannot be interfered with, unless the same is so perverse that no ordinary prudent man come to that conclusion on the basis of the evidence adduced. On a consideration of Ext.P10 order, I do not find any perversity in the findings arrived at by the Labour Court.

In the above circumstances, I am not inclined to entertain this writ petition and accordingly, the same is dismissed.

S. SIRI JAGAN, JUDGE

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